FARAD CONTINUATION SHEET No.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 3271 OF 2004**

---

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

---

Mr. Prasad S. Dani for Petitioner.

Mrs. S.S. Bhende, A.G.P. for Respondent Nos. 1 and 2.

Mr. C.J. Sawant with Mr. Vijay Patil for Respondnet NO. 3.

Mr. V.K. Chaudhary for Respondnet NO. 4.

CORAM : F.I. REBELLO &
S.P. KUKADAY,JJ.
DATED : JANUARY 28, 2005

P.C.

. Rule.

. Considering the order to be passed, it is not necessary to deal all the contentions advanced.

. The Petitioner is a member of Respondent No. 3. It is the case of the Petitioners that they came to know that Respondent NO. 3 had advanced loan to the company known as

Allluminium Profiles Ltd. The documents in their possession show that Respondent No. 4 stood as guarantor for the loan advanced by Respondent No. 3 to the said Aluminium Profiles Ltd. At the relevant time, Respondent NO. 4 was the Chairman of the Board of Directors of Respondent No. 3. It is further case of the Petitioner that the loan advanced turned out tobe a bad debt, yet no steps were taken to recover the loan. On 14.7.2003, they made representation to the Commissioner for Cooperation and Registrar of Cooperative Societies, Respondent No. 4 to initiate action under Section 78 as also the Board of Directors under Section 88 of the M.C.S. Act, 1960. Reply came to be filed by the Petitioner on 17.10.2002. The Divisional Joint Registrar treated the said application as revision application and by the impugned order held that the revision was not maintainable as no order is passed by any authority. Aggrieved by that order, the petitioner has preferred the present petition.

. Replies have been field on behalf of amongst others by Respondent No. 2 wherein it is sought to be pointed out that a resolution came to be passed by Respondent

No. 3 Bank on 18.8.2003 whereby application by Respondent No. 4 for discharge as guarantor was accepted. The Petitioner contends that in the meeting held on that date no such resolution was passed. He relies on the affidavits of Directors who were present in the meeting. For the order tobe passed, it is not necessary for this court to go into those aspects.

. The order passed by the Divisional Joint Registrar which is impugned is totally without jurisdiction as the Petitioner herein had not preferred revision application but made a representation for taking action under Section 78 and 88 of the M.C.S. Act. The main grievance as can be seen from the petition and as raised by the petitioner, is that Respondent No. 4 as a Chairman and Director could not have stood as guarantor for the loan advanced by Respondent No. 3 to Alluminium Profile Ltd. and by doing so is entitled to be for disqualified. The Petitioner has also sought action against other directors for advancing loan. It is not for this court to go into that aspect as all these issues will be at large before the competent forum i.e. Respondent No. 2.

. In the light of the above, the following order :

(1) The impugned order at Exh. G to the petition is quashed and set aside.

(2) Representation by the Petitioner dated 27.10.2003 be considered afresh by competent officer to be appointed by Respondent No. 2 other than the officer who had decided earlier application or the the officer who has filed affidavit before this court.

(3) Though representation was seeking action also against other board of directors apart from Respondent No. 4, considering the relief sought for in the present petition, the representation will be limited to respondent No. 4 only.

(4) The officer appointed after hearing the petitioner, respondent No. 3 Bank and respondent No. 4 and after allowing the parties to produce documents in support of their contentions to decide whether to proceed to take action according to law at any rate within the period of eight weeks from today.

(5) Respondent No. 2 is directed to appoint competent officer within four weeks from today.

(6) Needless to say that all questions on merits are left open to be considered by the competent officer to be appointed.

(6) Rule made absolute accordingly. No order as to costs.

. Personal Secretary to issue authenticated copy of this order.

(F.I. REBELLO,J.)

(S.P. KUKADAY,J.)